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Refund of CWT and VAT upon dissolution of company

IF you are the owner of a dissolving company that has unutilized input value-added tax (VAT) in the amount of P100 million and unutilized creditable withholding tax (CWT) in the same amount, and you are expecting to recover the total amount—P200 million—by way of a refund, you might be in for a surprise. Any input tax accumulated upon a company's dissolution may be refunded, but it is a different story as far as excess CWT is concerned.

If, for instance, a company has excess CWT tax credits for 2009 onward and opted to always carry over its tax credits to the succeeding years, it will not be allowed to refund them, because it would have been in violation of the irrevocability rule under the Tax Code. This rule means that if an excess CWT is carried over to the succeeding year, the taxpayer's only recourse is to carry over the unutilized credits to the succeeding taxable years until the same is fully utilized.

But what if a company is dissolved and there is no more opportunity for it to utilize the same excess CWT credits? The court has ruled that, notwithstanding that the Tax Code specifically provides the irrevocability rule, in the event of the cessation of business, a company may still opt to claim for refund, considering that it can no longer utilize such excess credits, but only up to a limited extent. The court says no claim for refund shall be filed after the expiration of two

years from the date of payment of the tax, regardless of any supervening cause that may arise after payment.

The reckoning of the two-year prescriptive period for filing a claim for refund of excess income tax paid/withheld commences from the date of filing of the annual income-tax return (AITR), because it is only on that date that the exact tax liability or refundability of the tax can be determined.

If the company was dissolved in 2012 and filed its AITR for taxable year 2012 on April 15, 2013, it, thus, has until April 15, 2015, to file its claim for refund in both administrative and judicial levels as regards the excess CWT incurred in 2012. However, as regards the company's prior year's excess credits carried over or CWT that were incurred prior to 2012, the same is prescribed, considering that it covers tax credits from taxable year 2011 and prior years therefrom, for which the claim for refund should have been made, at the latest, on April 15, 2014. In other words, if the excess CWT from 2011 and prior years amounts to, say, P50 million, the same can no longer be refunded, despite the dissolution of the company, since the two-year prescriptive period from payment of the tax has lapsed. This has been the ruling of the Court of Tax Appeals en banc (CTA EB) on *Mindanao I Geothermal Partnership v CIR* (Commissioner of Internal Revenue), also known as CTA EB Case 956.

This is not true with VAT. The Tax Code says a company whose registration has been canceled due to retirement from or cessation of business may, within two years from the date of cancelation, apply for the issuance of a tax-credit certificate for any unused input tax. The operative phrases are "within two years" and "any unused input tax."

On claims for VAT refund after dissolution, it is important to remember that the registration of any person who ceases to be liable for any tax type shall be canceled only upon filing an application for a registration-information update. However, the cancelation of registration will be effective from the first day of the following month. This is the reckoning point and the peculiarity of the two-year prescriptive period on VAT refund upon dissolution. In one case, a company filed its application for cancelation of the taxpayer-identification number and for the issuance of a tax-clearance certificate with a claim for refund of excess input VAT on April 15, 2010. Hence, the company's VAT registration is considered canceled, effective May 1, 2010, which is the first day of the following month. Counting two years from the said date of cancelation, the company may apply for refund until May 1, 2012. In the same case, the filing of the company's administrative claim was made on April 15, 2012, which the court declared as premature.

Unlike CWT claims, "any" unused VAT may be refunded upon dissolution. As discussed above, the excess CWT that may be refunded by a company upon dissolution is limited to those that it paid within two years from the dissolution. In other words, if a company has accumulated unutilized input VAT dating back to 2000 in the amount of P100 million, the company may refund the entire amount upon dissolution. On the other hand, if the company has an accumulated CWT of P100 million dating back to 2000, it may only refund the P10 million excess CWT it incurred on the last two years of its operation. The remaining P90 million will be lost forever. I must emphasize, though, that this is only the stand of the CTA EB. The Supreme Court will still have the final say.

It is important to understand the difference between VAT and CWT claims upon dissolution, as well as the complexity of the procedures to be followed in claiming for refund, so that a company will be able to maximize the use of its CWT and input VAT, even after its dissolution.

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